IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE THOTTATHIL B.RADHAKRISHNAN

FRIDAY, THE 2ND NOVEMBER 2007 / 11TH KARTHIKA 1929

OP.No. 7008 of 2003(H)

PETITIONER:

ACHUTHANANDAN T.B.(MINOR)
REP.BY HIS FATHER DR.A.SREENIVASAN,
LAKSHMI NIVAS, BANGLAPARAMBU, THATHAMANGALAM,
PALAKKAD.

BY ADV. SMT.V.P.SEEMANDINI
SRI.M.R.ANISON

RESPONDENTS:
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1. **THE STATE OF KERALA, REP.BY ITS**
   SECRETARY TO GOVERNMENT, SCHEDULED CASTE AND
   SCHEDULED TRIBE DEVELOPMENT DEPARTMENT,
   GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM.

2. **THE COMMISSIONER FOR ENTRANCE**
   EXAMINATIONS, SANTHI NAGAR, THIRUVANANTHAPURAM

3. **THE TAHSILDAR, TALUK OFFICE, CHITTUR,**
   PALAKKAD DISTRICT.

4. **THE VILLAGE OFFICER, VILLAGE OFFICE,**
   THATHAMANGALAM, PALAKKAD.

ADDL.R5 , R6 IMPLEADED.

5. **THE VIGILANCE CELL,**
   DIRECTORATE OF KIRTADS REP.BY ITS
   VIGILANCE OFFICER, KOZHIKODE 17.

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6. THE SCREENING COMMITTEE FOR VERIFICATION OF CASTE CERTIFICATE, REP.BY ITS CONVENOR, OFFICER OF THE COMMISSIONER FOR ENTRANCE EXAMINATION, HOUSING BOARD BUILDING, SANTHI NAGAR, TRIVANDRUM IS IMPLEADED AS ADDL.R5,R6 AS PER ORDER DT. 16.9.03 IN IA. 10994/03.

BY GOVERNMENT PLEADER SRI.S.SANTHOSHKUMAR

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 02/11/2007, COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

OP. NO.7008/2003

ORDER ON CMP. NO.12308/03 IN IA. 9509/03,3426/03,308/03 IN OP. NO.7008/2003

DISMISSED

02/11/2007 SD/- THOTTATHIL B.RADHAKRISHNAN, JUDGE

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1:- COPY OF THE COMMUNITY CERTIFICATE DT. 9.6.78 ISSUED BY THE 3RD RESPONDENT.

EXT.P2:- COPY OF THE RELEVANT PAGE OF THE PETITIONER'S SSLC BOOK SHOWING HIS CASTE AS THANDAN.

EXT.P3:- COPY OF THE ORDER DT. 12.6.95 IN CMP.15024/94 IN OP. NO.8611/94 OF THIS HONOURABLE COURT.

EXT.P4:- COPY OF THE NATIVITY CERTIFICATE DT. 25.2.03 ISSUED BY THE 4HT RESPONDENT.

EXT.P5:- COPY OF THE FORMAT IN WHICH CASTE AND NATIVITY CERTIFICATE ARE TO BE ISSUED BY RESPONDENTS 3 & 4.

EXT.P6:- COPY OF THE JUDGMENT DT. 27.2.03 IN OP. 8611/94 OF THIS HONOURABLE COURT.

EXT.P7:- COPY OF THE MEMO DT. 26.6.2003 BY WHICH THE PETITIONER APPEARED FOR THE COUNSELLING HELD ON 26.6.03, ISSUED BY THE 2ND RESPONDENT .

EXT.P8:- COPY OF THE REPORT DT. 2.6.03 OF THE ADDITIONAL 5TH RESPONDENT.

EXT.P9:- COPY OF THE WRITTEN EXPLANATION SUBMITTED BY THE PETITIONER BEFORE THE ADDL. 6TH RESPONDENT.

EXT.P10:- COPY OF THE ORDER DT. 25.7.03 ISSUED BY THE ADDITIONAL 6TH RESPONDENT.

EXT.P11:- COPY OF THE GOVERNMENT ORDER DT. 15.12.98.

/TRUE COPY/

P.A. TO JUDGE

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THOTTATHIL B.RADHAKRISHNAN, J.

W.P(C).No.7008 OF 2003

Dated this the 2nd day of November, 2007

JUDGMENT

Petitioner is the brother of T.S.Reghunath, whose writ petition W.P(C).No.30798/03 was disposed of by me today by a separate judgment. They are the children of Sri.A.Srinivasan. As noticed by me in W.P(C).No.30798/03, the father of the petitioner, viz., Srinivasan, is the beneficiary of the judgment dated 27.2.2003 in O.P.No.8611/94, which was Ext.P4 in W.P(C).No.30798/03. By virtue of the declarations, directions and orders contained in that judgment, Srinivasan was entitled to be governed by the certificates already issued to him, showing that he belongs to Thandan community and the competent authority has the liberty to take appropriate action in terms of Act 11 of 1996 for cancellation of that certificate, in accordance with law. The necessary consequence of the judgment in O.P.No.8611/94, as held by me in W.P(C).No.30798/03, is that Srinivasan and his children still continue to be treated as belonging to Thandan community, until the competent authority

concludes against Srinivasan by setting aside the caste certificate issued to him and such an exercise may be done only in accordance with the provisions of Act 11 of 1996. Short of that, if the petitioner continue to hold a certificate that he belongs to Thandan community, there is no reason why the petitioner in this case, who is admittedly his son, cannot also enjoy that status as to caste, which enjoyment would be co terminus with that of the father.

2. Learned special Government Pleader appearing for the official respondents states that proceedings have been initiated under Act 11 of 1996 in relation to the caste status of Srinivasan, while the learned counsel for the petitioner refused that by stating that Srinivasan has not received any notice of such proceedings.

3. In view of the fact that the children of Srinivasan are entitled to enjoy a declaration as to their caste status in terms of

the reigns in favour of their father Srinivasan, it has to be held that, as of now, the petitioner is entitled to be treated as belonging to Thandan community without prejudice to the right of the competent authority to take appropriate action in accordance with the provisions of Act 11 of 1996.

4. In the result, this writ petition is allowed quashing Ext.P10 and directing that the petitioner will be issued caste certificate showing him as belonging to Thandan community, however, that such certificate will be subject to finalisation of any proceedings under Act 11 of 1996 in relation to the caste status of the petitioner's father Sri.A.Srinivasan. The writ petition is allowed to the aforesaid extent.

5. After pronouncing this judgment, learned special Government Pleader pointed out that this matter may be listed to be spoken to since he had accidentally omitted to bring to the

notice of this Court Ordinance No.55/07 and in particular, clause 6 thereof, inserting Section 6 A into Act 11 of 1996.

Post on 6.11.2007.

6.11.2007.

This matter is taken up today, following the listing on the previous day, to be spoken to, at the request of the learned special Government Pleader. He points out that by virtue of clause 4 of Ordinance No.55/07, Section 6 A has been inserted into the principal Act, whereby, the rejection of an application for caste certificate nullifies any certificate already given and the rejection of the application by the screening committee would also to be treated as a decision resulting in the cancellation of the certificate. That provision is deemed to have come into force only on 1.2.2007. Not only that, the judgment in this case is essentially depending upon the decision rendered by this Court

on 27.2.2003 in the case of Sri.T.A.Srinivasan, father of the petitioner. Though I do not presently intend to go into the question as to whether Section 6 A, as introduced into the Act by Ordinance No.55/07, as a piece of State Legislation, has the vitality to override writs, directions, orders, declarations etc, issued in writ jurisdiction in exercise of authority under Article 226 of the Constitution of India, on facts, it is clear that unless Srinivasan's caste status is finally decided, it would be wholly undesirable to conclude on the caste status of his children. For this reason, the submission on behalf of the respondents is repelled and the judgment dated 2.11.2007 is sustained. It is clarified that all other issues are left open.

Sd/-

THOTTATHIL B.RADHAKRISHNAN,
Judge

kkb.

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THOTTATHIL B. RADHAKRISHNAN, J

O.P.NO.7008 OF 2003

JUDGMENT

2ND NOVEMBER, 2007.

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